

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

IN RE: Rafael Rivera,)	CHAPTER 13
)	
)	
Debtor.)	
)	CASE 11-24956
)	

**MOTION TO REOPEN CLOSED BANKRUPTCY CASE
IN ORDER TO ENFORCE DISCHARGE INJUNCTION**

COMES NOW, the Debtor, by and through his Attorney, Howard Slomka, Esq., and requests that the Court reopen this Chapter 13 bankruptcy case following the Order of Discharge entered on May 11, 2017 (Doc. No. 88) and case closure on June 15, 2017 showing the Court the following:

Debtor filed its Amended Motion to Determine Secured Status of Claim on February 8, 2012 (the “Motion to Strip Lien”) related to a second mortgage held by BAC Home Loan Servicing, LP (“BAC”). The second mortgage (the “Lien”) encumbered Debtor’s home at 3875 Overlake Drive Cumming, GA 30041 (the “House”).

On March 19, 2012, the Court entered its Order granting the Motion to Strip Lien (the “Order”) (Doc.No.27). The Order expressly held that the Lien held by BAC shall be treated entirely as a general non-priority unsecured claim. The Order further held that upon discharge of Debtor, the Security Deed recorded at Book 5229, Page 310 in the official records of Forsyth County shall be distinguished automatically. Debtor also filed

a Notice of Cancellation of Lien in the public records on September 27, 2017 at Book 8340, Page 553.

Notwithstanding the extinguished Lien and the discharge of all general unsecured debts, including the debt that was secured by the Lien (the “Debt”), Select Portfolio Servicing Inc. (“SPS”), as successor to BAC, is attempting to collect the Debt from the Debtor. SPS has been informed of this violation and has refused to correct its statements and cease collection activities against Debtor.

Debtor seeks to reopen this case for the limited purpose of filing an Adversary Complaint against SPS to allege SPS’s intentional violation of the Discharge Order, and to collect damages associated therewith.

WHEREFORE DEBTORS PRAY that the Court reopen this closed bankruptcy case so that Debtors can address the discharge violation and seek all appropriate remedies at law.

This 9th day of October, 2024

Respectfully,

_____/s/_____
Howard P. Slomka
Georgia Bar #652875
Attorney for the Debtor
Howard Slomka, PC
6400 Powers Ferry Road, Suite 200
Atlanta, GA 30339
Howie@Slomka.us
770-856-5793

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NOTICE OF HEARING

PLEASE TAKE NOTICE that Debtor RAFAEL RIVERA has filed a Motion to Reopen Closed Bankruptcy Case (the “Motion”) and related papers with the Court seeking an order reopening the case.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion at **9:40 a.m. on November 7, 2024** in Courtroom 103, United States Courthouse, 121 Spring Street SE, Gainesville, GA 30501, which may be attended in person or via the Court’s Virtual Hearing Room. You may join the Virtual Hearing Room through the “Dial-In and Virtual Bankruptcy Hearing Information” link at the top of the homepage of the Court’s website, www.ganb.uscourts.gov, or the link on the judge’s webpage, which can also be found on the Court’s website. Please also review the “Hearing Information” tab on the judge’s webpage for further information about the hearing. You should be prepared to appear at the hearing via video, but you may leave your camera in the off position until the Court instructs otherwise. Unrepresented persons who do not have video capability may use the telephone dial-in information on the judge’s webpage.

Your rights may be affected by the Court’s ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in

this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleadings with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk before the hearing. The address of the Clerk's Office is: Clerk, U. S. Bankruptcy Court, 121 Spring Street, SE Gainesville, FL 30501. You must also mail a copy of your response to the undersigned at the address stated below.

This 9th day of October, 2024

Respectfully,

_____/s/_____
Howard P. Slomka
Georgia Bar #652875
Attorney for the Debtor
Howard Slomka, PC
6400 Powers Ferry Road, Suite 200
Atlanta, GA 30339
Howie@Slomka.us
770-856-5793

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Motion to Reopen Closed Bankruptcy Case and Notice of Hearing upon the following by depositing a copy in the United States First Class Mail in a properly addressed envelope with adequate postage affixed there on to:

Nancy J. Whaley, Trustee
303 Peachtree Center Avenue, Suite 120
Atlanta GA 30303

Select Portfolion Servicing, Inc.¹
PO Box 65250
Sat Lake City, UT 842265-0250

Prober & Raphael²
PO Box 4365
Woodland Hills, CA 91365-4365

This 9th day of October, 2024

Respectfully,

_____/s/_____
Howard P. Slomka
Georgia Bar #652875
Attorney for the Debtor
Howard Slomka, PC
6400 Powers Ferry Road, Suite 200
Atlanta, GA 30339
Howie@Slomka.us
770-856-5793

¹ Current lender contact for Debtor's loan servicing.

² Original counsel who filed proof of claim 4-1.